MERRILL G. MEMMOTT

IBLA 86-153 Decided November 20, 1987

Appeal from a decision of the Utah State Office, Bureau of Land Management, which declared nine placer mining claims, UMC 285651 through UMC 285659, null and void ab initio.

Affirmed in part; reversed in part.

1. Mining Claims: Lands Subject To--Mining Claims: Patent

   Mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio.

2. Mining Claims: Lands Subject To--Mining Claims: Placer Claims

   A placer mining claim partially located on land patented without a reservation of minerals to the United States is properly declared null and void to the extent it includes such land.

3. Homesteads (Ordinary): Mineral Reservation--Mineral Lands: Mineral Reservation--Mineral Lands: Nonmineral Entries--Patents of Public Lands: Reservations

   A patent issued pursuant to the Homestead Act of May 20, 1862, as amended, 43 U.S.C. § 161 (1976), cannot be construed as reserving to the United States minerals not specifically reserved therein.

4. Mining Claims: Lands Subject To--Mining Claims: Patent--Patents of Public Lands: Effect--Patents of Public Lands: Reservations

   Where public lands are disposed of with a reservation of minerals to the United States, the reserved minerals are subject to location under the mining laws when Congress has expressly authorized mineral location of reserved minerals in the legislation providing for the reservation. Sec. 8 of the Taylor Grazing Act, 43 U.S.C. § 315g(d) (1970).

5. Mining Claims: Lands Subject To--School Lands: Indemnity Selections--State Selections

A mining claim located on land which had been subject to the final approval of a list of state-selected land is properly declared null and void ab initio.

6. Patents of Public Land: Generally--Patents of Public Land: Effect

A patent of land issued by the proper officers of the United States is presumed to be valid and to pass title.

APPEARANCES: Merrill G. Memmott, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Merrill G. Memmott appeals a decision dated October 17, 1985, which declared the Ranch Creek Nos. 1 through 9 placer mining claims, UMC 285651 through UMC 285659, null and void ab initio. 1/ The decision was issued by the Utah State Office, Bureau of Land Management (BLM), and states that the mining claims "are situated entirely on land patented out of Federal ownership, by Homestead Entry Patents, Cash Entry Patent, State Exchange Patent, or State of Utah In Lieu Selections, without a reservation to the mineral interest." The decision further states that "[p]ortions of these lands were acquired by the United States and are only open to mineral leasing," and that "[l]and patented out of Federal ownership or acquired by the United States is segregated from mining location."

The case file contains 30 completed "Notice of Location of Placer Claim" forms. Those which are the subject of the BLM decision state the date of location as July 18, 1985, and were date stamped as received by BLM on August 14, 1985. Together, the nine notices describe the SE 1/4 of sec. 22, the S 1/2 of sec. 23, all of sec. 26, and the E 1/2 of sec. 27, T. 33 S., R. 2 W., Salt Lake Meridian, in Garfield County, Utah.

On appeal, appellant challenges BLM's ruling that the lands were patented without a reservation of minerals to the United States.

By order dated May 21, 1987, we noted that with the exception of the master title plat, the casefile contained no information to aid in the resolution of the appeal. Accordingly, BLM was directed to furnish copies of

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1/ The record indicates Merrill G. Memmott is a co-locator of these claims. The other co-locators are James C. Sandberg, Rex Don Sandberg, Ralph P. Webb, Marie S. Memmott, Marba H. Sandberg (285651-285656), Avon S. Kelley (285657-285659), Grace L. Sandberg, and Ruth S. Webb.

State Exchange Patent 43-68-0032, dated June 3, 1968; Homestead Entry Patent 6237, dated April 28, 1899; Cash Exchange Patent 3504, dated October 2, 1891; Homestead Entry Patent 331511, dated May 7, 1913; and Homestead Entry Patent 331498, dated May 7, 1913. We also requested information regarding the acquisition of lands identified on the master title plat as Cash Exchange Patent 3504 and Homestead Entry Patent 6237.

In response to the May 21, 1987, order, BLM filed further information with the Board on June 22, 1987.

In his statement of reasons for appeal (SOR), Memmott contends that the BLM decision fails to justify the conclusion that the mining claims are null and void ab initio. Memmott concedes, however, that the mining claims are partially located on lands that have been patented under the Homestead Act but contends that no mining rights were given to the homesteaders. Appellant further concedes that the mining claims are partially located on lands covered by a State Exchange Patent but contends that no mineral rights were given to the State of Utah. Together with the SOR appellant has attached a copy of a document, signed by the Secretary of State of Utah and dated January 17, 1966, which certifies that lands described in the document were selected by the State of Utah for school indemnity lands purposes and approved by the U.S. Secretary of the Interior on December 1, 1965.

Appellant also attached to the SOR a copy of a quitclaim deed executed by the Regional Director, Region IX, Farm Security Administration, U.S. Department of Agriculture. The deed was executed March 20, 1944, and conveyed the SE 1/4 SE 1/4 of sec. 22; the SW 1/4 SW 1/4 of sec. 23; the W 1/2 NW 1/4, and the NW 1/4 SW 1/4 of sec. 26; and the E 1/2 NE 1/4 and the NE 1/4 SE 1/4 of sec. 27, T 33 S., R 2 W., Salt Lake Meridian, as well as 1500 shares of stock in the Horse Creek Irrigation Company of Henderson, Utah, to Joseph C. and Anna Marie Sandberg.

Neither the quitclaim deed nor the January 17, 1966, document was reflected on the master title plat. The January 17, 1966, document was not referred to by BLM in the information filed on June 22, 1987.

[1, 2] It is well settled that mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio. Bill and Judy Bass et al., 84 IBLA 233 (1984). Further, a placer claim partially located on land patented without a reservation of minerals to the United States is properly declared null and void to the extent it includes such land. Florian L. Glineski, 87 IBLA 266, 270 (1985).

[3] As to Homestead Entry Patents 6237, 331511, and 331498, all three were issued pursuant to the Act of May 20, 1862, as amended, 43 U.S.C. § 161 (1976) (repealed by section 702 of the Federal Land Policy Management Act of 1976, 90 Stat. 2787, but with a savings clause as to patents issued prior to repeal). The patents provide for no mineral reservation to the United States. Such patents cannot be construed as reserving to the United States any minerals other than those specifically named, and as such the lands encompassed by the patents were unavailable for mineral location. Lee E. Williamson, 48 IBLA 329, 331 (1980). Memmott's arguments regarding the Homestead Entry Patents

concern the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), which was not enacted into law until 1916, well after all of the Homestead Entry Patents had been issued.

Homestead Entry Patent 6237 covers the SE 1/4 SE 1/4, sec. 22; the SW 1/4 SW 1/4, sec. 33; the NW 1/4 NW 1/4, sec. 26; and the NE 1/4 NE 1/4, sec. 27. Homestead Entry Patent 331511 covers the W 1/2 NE 1/4 and the W 1/2 SE 1/4 of sec. 27. Homestead Entry Patent 331498 covers the SW 1/4 SW 1/4 of sec. 26, and the SE 1/4 SE 1/4 of sec. 27. Those lands were therefore unavailable for mineral location. 2/

[4] State Exchange Patent 43-68-0032 dated June 3, 1968, was issued to the State of Utah "pursuant to the Act of June 28, 1934, 48 Stat. 1272, as amended, 43 U.S.C. 315g (1964) [Taylor Grazing Act]." The patent states that the land was granted to the state "EXCEPTING AND RESERVING TO THE UNITED STATES: * * * 2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law." This reservation is authorized by section 8 of the Taylor Grazing Act, 43 U.S.C. § 315g(d) (1970) (repealed by section 705(a) of the Federal Land Policy Management Act of 1976, 90 Stat. 2792, but with a savings clause as to patents issued prior to repeal) which states in part:

> Where mineral reservations are made by the grantor in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who prospects for or acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the prospecting for, mining and removal of the minerals therefrom, and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon.

As indicated by the language above, where mineral reservations are made in patents to lands conveyed pursuant to the Taylor Grazing Act, Congress expressly authorized location of the reserved minerals. See Richard G. Bradley, 89 IBLA 281, 283 (1985). In view of this express authorization and the clear language in the mineral reservation contained in the State Exchange Patent, we conclude the lands encompassed by such patent are open to mineral entry and location. Thus, the lands covered by State Exchange Patent 43-68-0032 (E 1/2 SW 1/4 and W 1/2 SE 1/4 of sec. 23) are available for mineral location and the portions of appellant's mining claims located on such lands should not have been declared null and void ab initio.

2/ In addition, the land covered by Homestead Entry 331498, May 7, 1913, is also described in a Warranty Deed, dated Feb. 23, 1937, to the United States of America, as Grantee, by Walter W. Steed and Lillie S. Steed, as grantors. Land acquired by the United States does not become public land by the mere process of its acquisition, and in the absence of specific statutory directive to the contrary, is not open for location of mining claims. Maurice Duval, 68 IBLA 1 (1982).

[5] The document dated January 17, 1966, constitutes the record of a state school land indemnity selection made by the State of Utah and approved by the U.S. Secretary of the Interior on December 1, 1965. The lands subject to the selection, as affects Memmott's location notices, are described as the N 1/2 S 1/2 and the SW 1/4 SE 1/4 of sec. 22, and the E 1/2 and the E 1/2 W 1/2 of sec. 26. As legislation enacted by the Congress designed to aid the common schools of states is to be construed liberally rather than restrictively, the effect of final approval of a list of state-selected lands is to transfer the legal title from the United States. Utah v. Kleppe, 586 F.2d 756 (10th Cir. 1978), rev'd on other grounds sub nom. Andrus v. Utah, 446 U.S. 500 (1980); George Antunovich, 76 IBLA 301, 308, 90 I.D. 464, 468 (1983). The lands covered by the document dated January 17, 1966, were therefore unavailable for mineral location.

Similarly, the master title plat references a land indemnity selection made by the State of Utah, effective as of April 8, 1966. The lands subject to the selection, as affects Memmott's location notices, are the E 1/2 SE 1/4 and the NW 1/4 SW 1/4 of sec. 23. Those lands, therefore, were unavailable for mineral location.

[6] Cash Exchange Patent 3504, dated October 2, 1891, states that the grantee

> had deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Salt Lake City, Utah Territory whereby it appears that full payment has been made by the [grantee] according to the provisions of the Act of Congress of the 24th of April, 1820, * * * and the acts supplemental thereto * * *.

The only limitation in the patent as regards mining, states that the tract is granted "subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law." The land encompassed by the Cash Exchange Patent is the SE 1/4 NE 1/4, and the NE 1/4 SE 1/4 of sec. 27 and the SW 1/4 NW 1/4, and the NW 1/4 SW 1/4 of sec. 26.

A patent of land issued by the proper officers of the United States is presumed to be valid and to pass title. Minter v. Crommelin, 59 U.S. 72 (18 How. 87) (1856). Unless and until a patent issued is overturned by a court of competent jurisdiction, a determination that mining claims located on the same land are void will be upheld. Henry J. Hudspeth, Sr., 78 IBLA 235, 237 (1984). Therefore, Memmott's mining claims were null and void ab initio as regards the lands covered by the Cash Exchange Patent. 3/

3/ Similarly, the land described in Homestead Entry Patent 6237 and Cash Exchange Patent 3504 are also described in a Quitclaim Deed, dated Mar. 20, 1944, from the United States of America to Joseph C. Sandberg and Anna Marie Sandberg.

In conclusion, our review of the status of the lands subject to mining claims UMC 285651 through UMC 285659 indicates that the land covered by State Exchange Patent 43-68-0032 was available for mineral location. All of the other lands sought for mineral location by Memmott, however, were unavailable for mineral location. Accordingly, mining claim UMC 285657 was improperly declared null and void ab initio as to the W 1/2 SE 1/4 of sec. 23, and mining claim UMC 285654, was improperly declared null and void ab initio as to the E 1/2 of SW 1/4 of sec. 23. The remaining portions of these two claims, along with the balance of all claims appealed, were properly declared null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part. 4/

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge

4/ Appellant seeks an award of costs incurred in the appeal. The amount claimed is not specified. The Equal Access to Justice Act, 5 U.S.C. § 504 (1982), provides for payment of attorney's fees and expenses in "adversary adjudications" before Federal agencies. 5 U.S.C. § 504(b)(1)(C) (1982). "Adversary adjudication" refers to cases "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. § 554(a) (1982). Since appellant's request for costs is not shown to be cognizable under the Act, it is denied. Bering Straits Native Corp. 83 IBLA 280, 288 (1984).